ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION I

CA06-240

January 24, 2007

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| LINDA ANNETTE SHORT d/b/a R&L PROFESSIONAL MANAGEMENT<br>APPELLANTS | APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, [CV-04-107 G] |
| V. | HONORABLE J. MICHAEL FITZHUGH, JUDGE |
| REVONA DEE FREEMAN<br>APPELLEE | AFFIRMED |

On March 21, 2004, appellee, Revona Dee "Crickett" Freeman, filed the instant case against appellant, Linda Short d/b/a R & L Professional Management, alleging claims of malicious prosecution, false arrest, false imprisonment, and abuse of process. The case was tried to a jury, which returned a verdict in favor of appellee, awarding her $35,000 in compensatory damages and $250,000 in punitive damages. Appellant filed a motion for a new trial, which was denied by the trial court, and this appeal followed. Appellant raises four points: 1) the trial court erred in failing to grant a new trial based on multiple errors under Rule 59; 2) the trial court erred in failing to instruct the jury on the crime of failure to vacate; 3) the award of punitive damages was excessive and was

awarded on an insufficient evidentiary basis; 4) the trial court erred in excluding the relevant testimony of Judge Wayland Parker and the opinion testimony of Prosecutor Steve Tabor. We disagree and affirm.

The facts of this case can be briefly summarized. Appellee operated her beauty shop and tanning salon in property that she leased from appellant and appellant's husband at the time, Rick Short. During the period 1998 through March 2003, Rick collected the rent from appellee in weekly installments by picking it up at her place of business and initialing her appointment calendar to show that he had received the amount due.

In January 2003, Rick and appellant separated, and appellant was convinced that he was having an affair with appellee. In March 2003, appellee received separate and conflicting letters from the Shorts, Rick and Linda, about rental payments. Appellant's letter directed appellee to pay the rent by delivering the payment to the office of R & L Professional Management. Rick's letter directed her to pay the rent to him, as she had in the past on a weekly basis. On March 31, 2003, Rick filed for divorce against appellant.

On April 1, 2003, appellee paid her rent to Rick. Rick testified that he told appellant that he had collected the rent; appellant denied that he told her. Appellant had an eviction notice served on appellee on April 7, 2003, and on that same date appellee paid Rick for another week of rent. Rick informed the sheriff that appellee had been paying her rent and that the eviction notice should be cancelled. Appellant had the eviction notice reissued, and it was served by the sheriff. Appellee took her evidence that she had made the rental payments to Allison Houston, a deputy prosecutor. Ms. Houston

recommended that appellee not be prosecuted for failure to vacate and noted that recommendation on the notice.

Also in April 2003, a no-contact order was entered in which appellant was prohibited from approaching or communicating with appellee. Appellee sought the action because of several incidents involving appellant, which appellee described as harassing. Testimony concerning the incidents included the following: appellant came to appellee's shop and made accusations against appellee in the presence of co-workers and customers; appellant blocked appellee with her truck near a dumpster at the back of appellee's place of business; appellant daily drove by appellee's place of business very slowly; appellant approached one of appellee's customers at the customer's house and told her that appellee was having an affair with appellant's husband; appellant told that same customer that appellee was the biggest whore in town and that she was snorting drugs up her nose; and appellant followed appellee and tailgated her.

Around the second week in April, Rick informed appellee that she should start paying the rent to appellant by placing the rent checks in the mail box at the retirement-center, which was used by appellant's office. In accordance with those instructions, on April 14, 2003, appellee placed a $250 cashier's check in the retirement center mailbox. That amount represented the balance for the April 2003 rent. According to Rick, appellant informed him that she received the check, but told him that she was not going to cash it.

Appellant then initiated another warrant for appellee's arrest for failure to vacate for nonpayment of rent. However, this time she initiated the process in the Fort Smith District Prosecutor's office rather than the Greenwood office, where Ms. Houston worked. The prosecuting attorney, Steve Tabor, testified that appellant did not inform him of several things, including that appellant had been the subject of at least four incident reports concerning harassment of appellee; that appellant had been arrested ten days earlier on a harassment charge filed by appellee; that appellant was under a no-contact order concerning appellee; that appellant had tried to proceed with the failure-to-vacate action through Deputy Prosecutor Allison Houston and that Ms. Houston had recommended not to proceed; and that Rick, not appellant, had always been responsible for collecting appellee's rent. Instead, relying solely upon the information that appellant gave him, Mr. Tabor pursued the failure-to-vacate charge against appellee.

On April 25, 2003, appellee was arrested for failure to vacate. The arrest took place at her business in front of her partner and her customers. She was taken to the Sebastian County Jail where she was fingerprinted and photographed. She was placed in a jail cell and held there for approximately two hours until her mother posted bond for her. On May 2, 2003, appellee dropped off her $500 cashier's check for May rent at the retirement center. The trial on the charge of failure to vacate was held on May 21, 2003. Appellee was found "not guilty" of the charge. She filed the instant action against appellant approximately one year later.

**I. The trial court erred in failing to grant a new trial based on multiple errors under Rule 59.**

For her first point of appeal, appellant contends that the trial court erred in failing to grant a new trial based on multiple errors under Rule 59 (a). We disagree.

Our supreme court has explained that a moving party under Rule 59(a) must demonstrate that its rights have been materially affected by demonstrating that a reasonable possibility of prejudice has resulted from the error. *Ford Motor Co. v. Nuckolls*, 320 Ark. 15, 894 S.W.2d 897 (1995). Prior to listing the various grounds for a new trial, the rule itself provides that "[a] new trial may be granted to all or any of the parties and on all or part of the claim on the application of the party aggrieved, for any of the following grounds *materially affecting the substantial rights of such party*[.]" (Emphasis added.)

The subsections of Rule 59 (a) that appellant relies upon in making her argument are: (1) any irregularity in the proceedings or any order of court or abuse of discretion by which the party was prevented from having a fair trial; (2) misconduct of the jury or prevailing party; (4) excessive damages appearing to have been given under the influence of passion or prejudice; (8) error of law occurring at the trial and objected to by the party making the application.

*Rule 59(a), subsections (1), (2), and (8)*

Relying upon these subsections of Rule 59, appellant contends that appellee's burden of proof at trial required her to establish elements of appellant's malice, ill will,

spirit of revenge, or ulterior purpose in order to prove the claims of malicious prosecution, abuse of process, false arrest, and false imprisonment, all arising from appellant's initiation of the criminal complaint against appellee for failure to vacate. The failure-to-vacate trial was held in district court on May 21, 2003, and appellant argues that the trial court allowed Rick to testify falsely that during March 2003 the air-conditioning wires were cut and graffiti was written on the building occupied by appellee. Appellant contends that Rick and appellee's attorney *knew* that those events occurred not in March 2003, but rather well after May 21, 2003, which was the date of the failure-to-vacate trial, and were therefore irrelevant in the malicious-prosecution trial. She argues, therefore, that the combination of these things, misconduct of the prevailing party's attorney and errors of law, resulted in "irregular proceedings" that should have served as grounds for a new trial under Rule 59. We do not agree.

In order to understand appellant's argument, it is necessary to explain the background concerning two motions in limine, one that was filed by appellee's counsel and one that was filed by appellant's counsel. Although the motions themselves are not included in the addendum, the hearings on the motions were at least partially abstracted by appellant. At the first hearing, appellee's counsel explained:

> First of all, we filed a motion in limine to exclude matters after May 21st of 2003. As the Court is aware, this is an intentional tort case involving a malicious prosecution, abuse of process and false arrest and imprisonment. The cause of action was complete and the Plaintiff's damages, by her own testimony, ended on May 21st, 2003 whenever she was found not guilty of the failure to vacate charge. There obviously were a lot of factual disputes that continued after the date that the Municipal Court or the District Court hearing was completed, but to us it seems

> like all that is going to do is cloud the issue, prolong the trial and deal with matters that really were not relevant. We understand that we are cutting off some of our evidence of continual harassment of the Plaintiff by the Defendant.
>
> . . . .
>
> So, basically our position is our causes of action were complete at that point in terms of the abuse of process, malicious prosecution, the false imprisonment, false arrest had already occurred and our claims in terms of mental anguish, upset, legal expenses, all were complete at that point. Plaintiff's testimony was that really the worry, the upset, sleeplessness all ended when she was found not guilty. So, really to go past that gets into matters that we concede are basically irrelevant.

In response to the trial court's inquiry of whether appellant intended to bring out anything that occurred after May 21, appellant's counsel explained in pertinent part:

> Your Honor, I think what they are trying to do is avoid me talking about the fact that the [appellee] now lives with my client's husband, ex-husband, and that is a matter of fact that I think needs to be brought out because of the fact that the credibility and the tendency for bias is an issue in the case. . . . I think the big part of their case will be the testimony of [appellee] and Rick Short, and to not let us expose the fact that Rick Short and [appellee] reside together is a fact that will overlook that potential bias, that they need to overcome.

At the close of the discussion about this particular motion, it is clear that the trial court did not rule on the motion because the trial court stated:

> I am inclined to grant the motion. However, I want to look at some cases relative to [appellant's] argument as to the bias aspect of it. What I will do is I will let you know the first thing in the morning as to whether or not, and I will give you another chance in the morning if you want to argue something else, if you find something between now and then, but I have a problem with the relevance of what happened after.

Toward the end of this preliminary hearing on motions, appellant's counsel discussed a motion in limine that he had filed:

> We have a motion, Your Honor, in limine. This really relates also to or similar to what [appellee] had asserted in an effort to try to keep out things after May the

> 21st, the date of the District Court trial. There were some photographs produced in discovery that spray paint was on [appellee's] building. [Appellee] has alleged that she believed that that was done by [appellant], although there is no proof of that. We ask that or these photographs are highly prejudicial. I would be glad to show those to the Court, but because they occurred well after this hearing and there is no probative evidence to demonstrate that [appellant] did it, it would be unfairly prejudicial for [appellee] to be even able to ask about these photographs.

The trial court asked appellee's counsel if he intended to go into that, and counsel responded, "Your Honor, based upon the Court's ruling on the May 21st, 2003, that is well after that, we are not going to be offering them." The trial court then explained:

> Well, I think my ruling is I wanted to look at possibly bringing out some of that on the basis of bias; that I was going to let you know on that in the morning. If the Court grants your motion, then, you don't intend to do it. If I deny your motion you do intend to do it?

Appellee's counsel responded, "I think that that is a fair statement, Your Honor, that we may." The trial court then stated, "Let me see the photographs. We will deal with that in the morning."

Although not abstracted, the record reveals that the next morning, prior to trial, the trial court heard additional arguments on appellee's motion in limine. At the conclusion of the arguments, the following colloquy occurred between appellee's counsel and the trial court:

> BY THE COURT: Well, as I stated yesterday, I have a hard time with the relevancy of who [appellee] is living with right now as it relates to whether or not she was maliciously prosecuted and falsely imprisoned and there was an abuse of process. So, the Court is going to find that that is not relevant as to the testimony of [appellee] and you cannot go into it, but I think it does go to the bias or the prejudice of Rick Short. So, I will allow you to go into it, just to the fact that he is seeing or living with [appellee] because I think you are entitled to show a relationship, I think of a witness to a party in this matter so that the jury might – –

> let me back up. One of the instructions that I give to the jury is 105, which deals with the credibility of witnesses. And it says that one of the things that they are to consider is any prejudice for or against a party. So, I think it would go to that. So, I will allow you to ask him about that fact.
>
> Are there any other matters that we need to take up?
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> BY [APPELLEE'S COUNSEL]: *Your Honor, on that point, I don't want to waive our objection to the Court's ruling, but based upon the Court's ruling I feel like that I am going to have to deal with that in opening and in testimony*. So, I don't want to waive our position that that shouldn't come in on either witness. So, I would like to note that on the record and ask the Court to rule that that is not a waiver.
>
> BY THE COURT: *The Court will so rule that if you make statements regarding it in the opening statement or closing argument or through other witnesses, that you are doing it solely because of the ruling that the Court made*.

(Emphasis added.) A fair interpretation of these discussions is that the trial court denied *appellee's* motion in limine to the extent that appellant's counsel would be allowed to "go into it, just to the fact that [Rick Short] is seeing or living with [appellee] because I think you are entitled to show a relationship . . . ." There is no indication that the trial court ruled on *appellant's* motion in limine concerning the photographs prior to the start of the trial.

During the testimony of Rick at the trial of this matter, appellee's counsel began to ask him a series of questions about his personal knowledge of the harassment that appellant allegedly engaged in toward appellee involving the cutting of air conditioner wires and graffiti painted on the building occupied by appellee. Rick stated that the incidents occurred in March 2003, and appellant's counsel objected. In a bench conference, appellant's counsel argued that appellee "actually asserted in a motion in

limine with regard to trying to bring out any allegations that occurred after the hearing on the district court trial, and now he is seeking to try to obtain that through this witness," and that because the incidents occurred after the district court trial, they were not relevant. Appellee's counsel responded:

> If I understood the Court's ruling, the Court did not grant that motion in limine. The Court overruled or at least in terms of the stuff about the affair and living together and that type of thing. *So, if I understood it, we were free to proceed because we were not waiving our objection. . . . I think if we are going to get or if they are going to cross examine him about living together and all this stuff we talked about initially, I think we have got to talk about the continuing harassment after the hearing.*

(Emphasis added.) Additional colloquy among counsel and court during this bench conference included:

> [APPELLANT'S COUNSEL]: For the same reasons that they raised for the objection, the fact that this occurred way after the District Court trial is only going to confuse; that the prejudice outweighs the probative value. All the reasons that they asserted that we should not go into any issues that happened after the District Court trial in May, I am objecting to his testimony as trying to bring out activities that occurred way after that. They admitted on direct through their first witness that the damages stopped at that time and to try to bring out allegations that occurred after that date is prejudicial and not relevant.
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> THE COURT: What is he going to say?
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> [APPELLEE'S COUNSEL]: I think that what he is talking about is the part where the air conditioning was cut at [appellee's place of business]. There was also the incident where the spray paint or where somebody spray painted whore and Crickett on the side of the building.
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> [APPELLANT'S COUNSEL]: This is an allegation that they cannot connect at all to my client but they are throwing out there way after the District Court trial in August and late July.

THE COURT: Is he going to say that he has got any evidence at all to tie that to [appellant]?

[APPELLEE'S COUNSEL]: Other than circumstantial; that she called her a whore and then whore was written on the side of the building and nobody else was calling her a whore. The [appellant] is the one that wanted to bring up the stuff after May 21st.

[APPELLANT'S COUNSEL]: The only thing that we wanted to bring up was this relationship between witnesses. That is activities after they admitted that their damages had closed.

[APPELLEE'S COUNSEL]: I don't think they can pick and choose, Judge. If they are wanting it opened up, then, they have opened it up. I don't think they can object. We were perfectly satisfied to leave everything at May 21st of 2003. The [appellant] is the one that said, no, we want to talk about stuff afterwards.

[APPELLANT'S COUNSEL]: We haven't talked about specific instances after the date of the District Court trial, we haven't yet.

THE COURT: The reason that I allowed that was to go to show the bias of the witness. Unless he can tie it in some way to her I am not going to allow you to go into it.

[APPELLEE'S COUNSEL]: Well, I will try to limit him to the stuff before the May 21st hearing.

THE COURT: That he has personal knowledge of.

[APPELLANT'S COUNSEL]: Would you instruct the witness to limit his testimony?

THE COURT: No, he just answers the questions. You can object if he doesn't.

The bench conference ended and Rick resumed testifying. However, with his first sentence, he again stated that the harassment he was describing by appellant toward appellee occurred in March 2003. Appellant again objected and another bench

conference was held. The gist of the conference was that the trial court denied appellant's counsel's request to voir dire the witness in order to tie down the dates of the incidents concerning the air conditioning wires and the graffiti, and told him to cover it on cross-examination. The testimony continued with references to the March 2003 time period. Later in Rick's testimony, appellee's counsel showed Rick a series of photographs depicting the graffiti at appellee's place of business, and appellant's counsel objected, again arguing that they occurred after May 21, 2003, and explaining why they should not be allowed. The following colloquy then occurred:

> [APPELLEE'S COUNSEL]: That all goes again to credibility in terms of the date and our position is it doesn't matter about the date, that he has testified about seeing her, about talking to her about it, about what was on there, and the wording is consistent with what she has called her. We have got testimony, clear testimony about what she called her.
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> THE COURT: If this occurred after May 21st or whatever the trial date was and you know it, you have a duty to the Court, because I am not going to allow anything to come in after May 21st except the fact that he may have been having a relationship.
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> [APPELLEE'S COUNSEL]: Well, Your Honor, if that is the Court's ruling, and I'm not sure that I understood that that was the Court's ruling, but if you are ruling that nothing after May 21st, 2003 can come in except the fact that they are living together, then, my opinion is that [appellant's counsel] is correct, that it did occur after May 21st and would be subject to exclusion under the Court's ruling.

From that series of events at trial, appellant now argues that the trial court erred in denying her motion for a new trial under Rule 59(a)(1) (any irregularity in the proceedings or any order of court or abuse of discretion by which the party was prevented from having a fair trial), 59(a)(2) (misconduct of the jury or prevailing party), and

59(a)(8) (error of law occurring at the trial and objected to by the party making the application). In essence, she contends that appellant's counsel engaged in misconduct by going forward with the "clearly erroneous and prejudicial" presentation of Rick's testimony, that the trial court made an error of law by admitting testimony over a proper objection, and that "the admission of knowingly erroneous or false testimony, aided by the misconduct of the prevailing party, was an irregularity in the proceedings, preventing a fair trial."

The decision to grant or deny a new trial under these subsections of Rule 59(a) is within the discretion of the trial court, and that decision will not be reversed absent a manifest abuse of discretion, that is, discretion exercised thoughtlessly and without due consideration. *See, e.g., Roberts v. Boyd*, 94 Ark. App. 345, ____ S.W.3d ____ (2006); *D.B.&J. Holden Farms Ltd. Partnership v. Arkansas State Highway Comm'n*, 93 Ark. App. 202, ____ S.W.3d ____ (2005).

The motion in limine that sought to exclude matters that happened after May 21, 2003, was filed by appellee, not appellant. The trial court denied appellee's motion in part to allow appellant to present evidence of possible witness bias. After the court's ruling in that regard, appellee's counsel took great care to inform the court that in light of the ruling, but without waiving the objection to post-May 21 evidence, counsel felt "like that I am going to have to deal with that in opening and in testimony. So, I don't want to waive our position that that shouldn't come in on either witness. So, I would like to note that on the record and ask the Court to rule that that is not a waiver." The Court

responded, "The Court will so rule that if you make statements regarding it in the opening statement or closing argument or through other witnesses, that you are doing it solely because of the ruling that the Court made." In addition, although appellant's counsel had also filed a motion in limine concerning the photographs of graffiti, he did not get a ruling on that motion.

Thus, contrary to appellant's efforts to characterize appellee's counsel's actions as misconduct worthy of a new trial, we think that it is understandable that appellee's counsel may have been confused about the exact nature of the trial court's ruling until the trial court made its ruling perfectly clear in the context of appellee's attempt to introduce the photographs. Furthermore, the trial court's handling of appellant's objections concerning this line of testimony was not such a clear error of law as to warrant a new trial. In short, we do not think that there were irregularities in these proceedings that prevented appellant from having a fair trial, and therefore we find no abuse of the trial court's discretion in denying appellant's motion for a new trial under these subsections of Rule 59(a).

*Rule 59(a), subsection (4)*

The remaining subsection relied upon by appellant in contending that the trial court erred in refusing to grant a new trial under Rule 59(a) is subsection (4), excessive damages appearing to have been given under the influence of passion or prejudice. However, because appellant also discusses this issue under Point III of this appeal, we will confine our discussion to that point, *infra*.

Finally, appellant also mentions under this first point of appeal the following bases on which she contends that a new trial should have been granted:

1) "the trial court refused jury instructions on questions raised by the pleadings and evidence, which instructions were proffered to the court during the charge conference [and] the jury should have been instructed on the elements of the crime of failure to vacate, such that Defendant could have argued that payments were not made in accordance with the contract, and that the charge was a misdemeanor, instead of a more serious charge." Appellant then notes that the argument is discussed more fully under Point II. No citations to authority nor convincing arguments are presented under this section of Point I. Where no citation to authority or convincing argument is offered, our appellate courts decline to address the issue. *Allen v. Allison*, 356 Ark. 403, 155 S.W.3d 682 (2004). We therefore confine our discussion of this issue to Point II, *infra.*

2) "A new trial should be granted based upon the trial court's refusal to allow testimony of Judge Wayland Parker, who conducted the district court failure to vacate trial, discussed more fully in Point IV, below, and excluding the testimony of Eddie Christian, who gave counsel to [appellant] . . . . [and] [a] new trial is further warranted on the court's rulings to limit the scope of the evidence as to the issues litigated and evidence presented at the district court failure to vacate trial, including opinion evidence on the issue of probable cause from Steve Tabor and Judge Wayland Parker, and also pertaining to the exclusion of evidence corroborating the issue of Ms. Short acting on the advice of counsel." Again, with no citation to authority and no convincing argument under this

subpoint, *Allen, supra*, we confine our discussion to Point IV, *infra*, where appellant discusses the issue more fully.

To the extent that appellant is making a cumulative-error argument, we note only that no cumulative-error argument was made during the trial and therefore cannot be raised on appeal. *Neste Polyster, Inc. v. Burnett*, 92 Ark. App. 413, ____ S.W.3d ____ (2005).

**II. The trial court erred in failing to instruct the jury on the crime of failure to vacate.**

Under this point of appeal, appellant challenges the trial court's refusal to instruct the jury on the crime of failure to vacate either as part of its instruction on probable cause or as an independent instruction. In addition, appellant asserts that the instructions given by the trial court on false arrest and false imprisonment did not include the correct statements of the law that she proposed in her proffered instructions on those torts. We find no abuse of discretion in the trial court's decisions on which instructions to use or to refuse in this case.

As a matter of law, litigants are entitled to a jury instruction when it is a correct statement of the law and there is some basis in the evidence to support it. *Lineberry v. Riley Farms Prop. Owners Ass'n*, 95 Ark. App. 286, ____ S.W.3d ____ (2006). However, a trial court's refusal to give a proffered instruction will not be reversed unless there was an abuse of discretion. *Id*. Moreover, just because a proffered jury instruction may be a correct statement of the law does not mean that a circuit court must give the

proffered instruction to the jury. *Walley v. State*, 353 Ark. 586, 112 S.W.3d 349 (2003). In fact, a non-AMI instruction is only to be given when the AMI instruction does not correctly state the law or where there is no AMI instruction on the subject. *Id*. There is no error in refusing an instruction which may have misled or confused the jury. *Richey v. Luffman*, 311 Ark. 81, 841 S.W.2d 622 (1992).

*Probable-Cause Instruction*

Malicious prosecution has as an element that the defendant did not have probable cause for initiating or continuing the criminal proceedings. The probable-cause instruction that was given by the trial court was thus a definitional instruction that was given in connection with the malicious-prosecution instruction, and it defined probable cause as "the existence of facts or credible information that would induce a person of ordinary caution to believe that the person accused is guilty of the crime for which she was charged." The gist of appellant's argument is that the jury also should have been instructed on the elements of the offense of failure to vacate, the prosecution of which gave rise to appellee's claims of malicious prosecution. Appellant argues that the trial court should have included the statutory language concerning failure to vacate because she was attempting to present the theory that appellee did not avail herself of the opportunity provided by that statute to tender her rent to the registry of the court and thereby avoid arrest for failure to vacate. In addition, appellant contends that without that statutory language the jury was not instructed on certain issues that were important to her

defense, giving as examples that there was evidence appellee was late in paying her rent, and that under the statute the failure to pay rent when due is the standard, and that the failure-to-vacate offense was a misdemeanor rather than a felony.

We have concluded that appellant's attempts to inject the failure-to-vacate statutory language and make the asserted arguments based thereon might well have confused the jury and amounted to an attempt to retry the failure-to-vacate case. Appellant's argument to the contrary is simply not convincing. We therefore find no abuse of discretion in the manner in which the trial court instructed the jury in this regard.

*False-Arrest/False-Imprisonment Instruction*

Appellant also contends that the trial court erred in its instruction on false arrest and false imprisonment because the instructions given did not include her proffered provisions that "were correct statements of the law and on which evidence was given." The instruction that was given merely set out the five elements of the tort. Appellant proffered the following provisions as additions to the trial court's instruction, and they were refused by the trial court:

> Where a person does no more than to give information by affidavit to an officer relative to a matter over which he has jurisdiction, such person is not liable for a trespass for false arrest for the acts done under a warrant which the officer issues on said charge.
>
> One who investigates or participates in a lawful arrest, as for example an arrest made under a properly issued warrant by an officer charged with the duty of enforcing it, may become liable for malicious prosecution or for abuse of process,

but he is not liable for false arrest or false imprisonment, since no false arrest or false imprisonment has occurred.

We find no abuse of the trial court's discretion. The instruction given by the trial court correctly instructed the jury on the tort of false imprisonment/false arrest, and appellant has not convinced us that the trial court abused its discretion in refusing her proffered provisions.

**III. The award of punitive damages was excessive and was awarded on an insufficient evidentiary basis.**

Under this point of appeal, appellant contends that the award of punitive damages was excessive and that it was awarded on an insufficient evidentiary basis because appellee failed to produce any evidence of appellant's financial condition, in particular her net worth. We hold that the punitive damages award was not excessive, and we do not address the argument that it was awarded on an insufficient evidentiary basis because the issue was not properly preserved for our review.

At the close of appellee's case, appellant moved for a directed verdict on appellee's claim for punitive damages, stating that "there has been insufficient evidence produced at trial for there to be any type of claim for punitive damages and we ask that that claim be dismissed." After the close of all of the evidence, appellant objected to the punitive-damages instruction "based on insufficient evidence being presented to give an instruction of punitive damages [and] move[d] the court now for a directed verdict on the issue of punitive damages ...." Rule 50(a) of the Arkansas Rules of Civil Procedure provides in pertinent part that a "motion for a directed verdict shall state the specific

grounds therefor." *See also Thomas v. Olson*, 364 Ark. 444, ____ S.W.3d ____ (2005). Appellant's motion for directed verdict with respect to the punitive-damages claim did not specify that the evidence was insufficient because appellee had not produced evidence of appellant's financial condition. Therefore, the sufficiency portion of this point of appeal was not properly preserved for our review.

In addition, we merely note that no objection was raised during closing arguments concerning comments about O.J. Simpson and $500,000 being nothing but an inconvenience to appellant. Few tenets are more firmly established than the rule requiring a contemporaneous objection in order to preserve a point for review on appeal. *Nazarenko v. CTI Trucking Co., Inc.*, 313 Ark. 570, 856 S.W.2d 869 (1993). Consequently, we do not address those specific matters.

We now address the excessiveness portion of appellant's argument. In determining whether a punitive-damages award is excessive, we follow a two-step analysis, as we in explained in *Aon Risk Servs. v. Mickles*, ____ Ark. App. ____, ____ , ____S.W.3d ____, ____ (Nov. 1, 2006) (citations omitted):

> First, we determine whether the award was excessive under state law. This entails an analysis of whether the jury's verdict is so great as to shock the conscience of the court or demonstrate passion or prejudice on the part of the jury. It also involves consideration of the extent and enormity of the wrong, the intent of the party committing the wrong, all the circumstances, and the financial and social condition and standing of the erring party.
>
> The second step is to evaluate the award under the federal due-process analysis set forth in *BMW of North America v. Gore*, 517 U.S. 559 (1996). Here, we determine the degree of reprehensibility of the defendant's conduct; the disparity between the harm or potential harm suffered by the plaintiff and the

> punitive-damages award (which ordinarily involves consideration of the ratio between the compensatory and punitive awards); and the difference between this remedy and the civil penalties authorized by statute or imposed in comparable cases. In assessing the degree of reprehensibility, we may consider whether the harm caused was physical as opposed to economic; whether the conduct evinced an indifference to or reckless disregard of the health and safety of others; whether the target of the conduct had financial vulnerability; whether the conduct involved repeated actions or was an isolated incident; and whether the harm was the result of intentional malice, trickery, or deceit, or mere accident. *Campbell* also held that, while the United States Supreme Court would not impose a bright-line ratio of punitive to compensatory damages, in practice, few awards exceeding a single-digit ratio will satisfy due process. In addition, our supreme court has stated that, in reviewing a punitive-to-compensatory ratio, we should determine whether the ratio is "breathtaking." Our standard of review is de novo.

The bulk of appellant's argument with respect to the first step of the analysis focuses upon her contention that there was an insufficient evidentiary basis for the award, which we have previously discussed. In addition, we note that while there may well be other wrongs that are more enormous, this wrong was extensive in that several episodes were involved, including blocking appellee's path from the dumpster, public accusations and name-calling, approaching prosecutors with knowledge that appellee had actually paid the rent, seeking out a willing prosecutor after being refused by the deputy prosecutor, the public arrest and time spent in jail, the fact that appellee's sick mother had to come to bail her out, the fear and expense of the trial, and the maliciousness of appellant's intentions. Therefore, with respect to this step of the analysis we have concluded that the amount of the award does not shock the conscience of this court.

With respect to the due-process portion of the analysis, our *de novo* review convinces us that appellant's conduct was very reprehensible. Appellant showed an

indifference or reckless disregard to appellee's well-being; appellant's conduct involved repeated actions, rather than isolated actions; and the harm was the result of intentional malice, not mere accident. In addition, the ratio between the compensatory and punitive damages award was approximately seven to one, well within the single-digit range. We also note that appellant's efforts to establish "scant proof of actual malice" are not convincing because they rely upon credibility determinations that the jury seems clearly to have decided against appellant. In short, we hold that the punitive damages award is not excessive because it complies with due process and we are not shocked by its amount.

## IV. The trial court erred in excluding the relevant testimony of Judge Wayland Parker, and the opinion of Prosecutor Steve Tabor.

For her final point of appeal, appellant contends that the trial court erred in excluding relevant testimony from Judge Wayland Parker and Prosecutor Steve Tabor. We disagree.

Judge Parker was the presiding judge at the failure-to-vacate trial in district court. Steve Tabor was the prosecuting attorney who pursued that action at appellant's behest against appellee. The decision of whether to admit relevant opinion evidence rests in the sound discretion of the trial court, and its ruling will not be reversed absent an abuse of discretion. *Brown v. State*, ____ Ark. App. ____, ____ S.W.3d ____ (June 14, 2006).

The trial court in the instant case heard testimony from both Judge Parker and Mr. Tabor outside the hearing of the jury in its effort to determine what, if any, of the

testimony should be presented to the jury. On direct examination of Judge Parker, he expressed his opinion that there had been probable cause to initiate the proceeding. On cross-examination, however, he acknowledged that certain facts, unknown to him at the time, could have affected his decision about probable cause. Mr. Tabor testified that his memory of the matter was very vague, and it was clear from his testimony that his opinion regarding the existence of probable cause would have been based primarily upon the fact that he allowed appellant to sign an affidavit. We find no abuse of discretion in the trial court's refusal to allow Judge Parker to testify and in its exclusion of opinion testimony from Mr. Tabor regarding the existence of probable cause in the failure-to-vacate case.

Affirmed.

VAUGHT and MILLER, JJ., agree.